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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,971	06/20/2003	David W. Diamond	PLA-22	6553
7590	07/09/2004		EXAMINER	
Pandiscio & Pandiscio 470 Totten Pond Road Waltham, MA 02451-1914				HYLTON, ROBIN ANNETTE
		ART UNIT	PAPER NUMBER	3727

DATE MAILED: 07/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/600,971	DIAMOND, DAVID W.
Examiner	Art Unit	
Robin A. Hylton	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Statyus

1)  Responsive to communication(s) filed on \_\_\_\_.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-19 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9-15-03.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention.

### *Claim Objections*

2. Claim 6 is objected to because of the following informality: in claim 6, line 4, -- a -- should be insert before "level". Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

3. Claims 2-3 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

Claim 2 recites the limitation "the level of said central body portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 4-15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson (US 2,614,727).

Robinson teaches a container 10 comprising an open top end and a closed bottom end formed by a side wall and a bottom well that is integral with the side wall, said bottom wall being characterized by an annular protuberance concentric with said side wall, said annular protuberance having a curved cross-section and constituting a curved extension of said side wall, and said annular protuberance being shaped to make a circular line contact with a flat supporting surface inwardly of said side wall. Robinson is not of a large size that a toddler could fall into.

It would have been an obvious matter of design choice to make the container of Robinson of a larger size, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Regarding claim 5-10, 15, and 19, it would have been an obvious matter of design choice to make the container or Robinson of an specific relative dimensions expedient in manufacturing and for its intended use.

6. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Wise (4,648,522).

Robinson teaches a container 10 comprising an open top end and a closed bottom end formed by a side wall and a bottom well that is integral with the side wall, said bottom wall being characterized by an annular protuberance concentric with said side wall, said annular protuberance having a curved cross-section and constituting a curved extension of said side wall, and said annular protuberance being shaped to make a circular line contact with a flat supporting surface inwardly of said side wall and a cover 12 for closing off said open top end of said container, said cover being characterized by a rim portion and a central body portion surrounded by said rim portion, said rim portion being adapted to make a locking connection

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with said side wall of said container, and said central body portion being characterized by a circular depression for stacking another container atop of it.

Robinson is not of a large size that a toddler could fall into and does not teach an annular depression having a curved cross-section such that said annular protuberance of another like container will make a close fit in said depression.

It would have been an obvious matter of design choice to make the container of Robinson of a larger size, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Wise teaches it is known to provide a container with a stacking lid having an annular depression 49 defined by a circular central portion 51 and an outer annular lid ridge 53.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of having an annular depression defined by a circular central portion and an outer annular lid ridge. Doing so prevents lateral movement of an upper, stacked container.

7. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Wise and Scott (US 6,047,847).

Robinson teaches the claimed container and lid assembly except for annular depression having a curved cross-section such that said annular protuberance of another like container will make a close fit in said depression.

Wise teaches it is known to provide a container with a stacking lid having an annular depression 49 defined by a circular central portion 51 and an outer annular lid ridge 53.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of having an annular depression defined by a circular central portion

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and an outer annular lid ridge. Doing so prevents lateral movement of an upper, stacked container.

8. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wise in view of Robinson.

Wise teaches the claimed container and cover except for the annular protuberance being shaped to make a circular line contact with a flat supporting surface inwardly of said side wall and the cover having a corresponding annular depression.

Robinson teaches it is known to provide a container bottom end wall with an annular protuberance being shaped to make a circular line contact with a flat supporting surface inwardly of said side wall.

Scott teaches it is known to provide a container bottom end wall with a curved portion to allow the container to tip over and prevent drowning of a toddler.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the bottom end wall of Wise with an annular protuberance being shaped to make a circular line contact with a flat supporting surface inwardly of said side wall and the corresponding annular depression of the cover with a curved shape to allow for a tight fit therebetween in a stacked configuration. Doing so allows for the container to be stably stacked and to rest in a stable position when untouched, but allows for tipping upon weight being applied to the upper end from an inside of the container. This allows for easier removal of the contents at the bottom of the container.

Regarding claim 5-10, 15, and 19, it would have been an obvious matter of design choice to make the container or Robinson of specific relative dimensions expedient in manufacturing and for its intended use.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

10. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

11. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-7306 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_  
Signature\_\_\_\_\_

Date\_\_\_\_\_

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

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If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Technology Center 3700 Customer Service Office at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH  
July 7, 2004



Robin A. Hylton  
Primary Examiner  
GAU 3727